Kalyan Singh vs. Union of India
(S.B.C.Writ Petition No.5618/93)

Date of Order:- 1st September,2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.M.S.Singhvi, Advocate for the petitioner.
Mr.V.K.Mathur, Assistant Solicitor General for Union of India.
Mr.Rameshwar Dave,Dy.Government Advocate for the State.

The petitioner by this writ petition has prayed for quashment of the order dated 14.10.1993 passed by Treasury Officer, Bikaner and the order dated 19.5.1992 addressed to the Treasury Officer by the Dy. Controller of Defence Accounts(Pension).

The petitioner who was a retired army personnel was re-employed as Care Taker in the office of the Commissioner, Command Area Development, Indira Gandhi Nahar Pariyojana, Bikaner under the State Government on 30th July, 1981. He retired from the services of Government of Rajasthan also on 30th October, 1992. The core of the controversy is whether the petitioner could receive dearness relief on the pension from both the governments namely, Central Government and the State Government. The aforesaid orders impugned in the present petition are consequential to letter dated 6th April, 1974 as amended by another letter dated 20th May, 1975 both issued by the Government of India in its Ministry of Finance. Earlier the Government of India vide letter dated 29th December,1976 directed that relief paid to the re-employed pensioners by Pension Disbursing Officer with the pension of the Central Government would be deducted by the fresh employer on the amount of pension paid

for the period of re-employment. However, when the difficulties were realised, by subsequent order dated 26th March, 1984, the Government of India further provided that the relief be not paid along with the pension. This controversy was set at rest by the judgment of the Hon'ble Supreme Court in Union of India & Ors. vs. G.Vasudevan Pillay & Ors., reported in (1995) 2 S.C.C. 32 upholding the decision of Government of India not to allow dearness relief on pension to such ex-servicemen employees who were re-employed in civil posts and were getting dearness relief on pension from the subsequent employer. This view was again reiterated by their Lordships of the Hon'ble Supreme Court in the subsequent case of National Ex-servicemen Co-ordination Committee & Ors. vs. Controller General of Defence Accounts & Ors., reported in 1997 S.C.C.(L&S), 116 wherein on the question of recovery of the amount paid in excess, their Lordships held that the Central Government should sympathetically consider the question of non-realisation of amount already disbursed to re-employed ex-servicemen. Subsequently, the Central Government has issued a office memorandum on 2nd July, 1999 on the basis of recommendations of the 5th Central Pay Commission in which it was directed that in so far as re-employed pensioners are concerned, the entire pension admissible is to be ignored at present only in the cases of those ex-servicemen who holds post below the rank of commissioned officer at the time of their retirement, their pay and pension is to be fixed at the minimum of the pay scale of the post in which he has been initially re-employed after his retirement from the Central Government. Such civilian pensioners will consequently be entitled to pay fixation at the minimum of the pay scale of the post of re-employment ignoring the entire benefit. It was further provided that in case the Central Government

pensioners who are re-employed under the Central Government or the State Government or a Corporation/Company/Body or a Bank, dearness relief will be admissible to such re-employment .

In the light of the authoritative pronouncement of the Hon'ble Supreme Court referred to above, the petitioner cannot be held entitled to receive dearness relief with pension from both the Central Government and the State Government. In case, he is found entitled to any relief consequent upon the acceptance of the recommendations of the 5th Central Pay Commission vide office memorandum of the Government of India in its Finance Department No.45/73/97-P&PW(G) dated 2nd July, 1999, the respondents may undertake the exercise of doing so if not already done within a period of three months from the date of receipt of copy of this judgment. The writ petition is disposed of with the aforesaid directions.

(MOHAMMAD RAFIQ),J.